IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Hanuman Singh v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.500/1997
under Article 226 of the Constitution of India.

Date of Order : 23rd August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Hamir Singh Sidhu, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner, a constable in Rajasthan Police, was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) with an allegation that while on duty on 5.10.1988 as Quarter Guard he consumed liquor and created nuisance by using abusive language, further on medical examination he was found under intoxication.

The petitioner denied the allegations and also submitted an explanation to the disciplinary

authority but the disciplinary authority being dissatisfied with the same appointed an inquiry officer to inquire into the allegations so levelled. The inquiry officer after holding inquiry submitted his report to the disciplinary authority on 11.4.1989. The disciplinary authority by an order dated 26.10.1989 imposed a penalty of dismissal from service upon the petitioner.

The petitioner being aggrieved by the order passed by the disciplinary authority preferred an appeal under Rule 23 of the Rules of 1958 but the same also stood rejected under an order dated 16.8.1990. A challenge to the order passed by the appellate authority was given by way of filing a review petition before His Excellency the Governor which came to be accepted under an order dated 27.1.1995. The Governor set aside the order passed by the appellate authority and remanded the matter to appellate authority to decide the appeal afresh after supplying a copy of inquiry report and reasons for disagreement of the disciplinary authority with the findings given by inquiry authority. An opportunity was also allowed to the petitioner to file a fresh appeal after receiving the documents referred above.

After disposal of review petition a copy of inquiry report was supplied to the petitioner, however, the reasons for disagreement were not given

to him. The petitioner, in these circumstances, preferred a fresh appeal on 7.4.1995 before the Deputy Inspector General of Police, Bikaner Range, Bikaner making it clear that no reasons for disagreement with the findings given by the inquiry officer were supplied to him. During pendency of appeal the Deputy Inspector General of Police i.e. the appellate authority appears to have directed to the disciplinary authority to supply reasons for disagreement to the petitioner, accordingly, by a communication dated 12.8.1995 the Superintendent of Police, Ganganagar (Disciplinary Authority) supplied reasons for disagreement with the inquiry officer to the petitioner. The petitioner treated this communication as a fresh order of penalty, however, from reading of it it is clear that it is not an order of penalty but a communication supplying reasons for disagreement with the findings of inquiry officer.

The appellate authority by an order dated 28.10.1995 rejected the appeal preferred by the petitioner maintaining the punishment of dismissal imposed upon him by the disciplinary authority under order dated 26.10.1989.

The petitioner has given challenge to the order dated 28.10.1995 passed by the appellate authority, dated 12.10.1995 (Anx.P/13) (the date of this order as shown in the document is 12.8.1995 and

not 12.10.1995 as stated by the petitioner in the petition) and the order dated 26.10.1989 passed by the disciplinary authority imposing penalty of dismissal.

Before proceeding further it is pertinent to clarify here that the petitioner treated the order dated 12.8.1995 (Anx.P.13) as an order passed by the disciplinary authority afresh in compliance of the order passed in review petition by His Excellency the Governor. In fact the order Anx.P/13 is a communication from the disciplinary authority whereby the petitioner was communicated with the reasons for disagreement with the findings given by the inquiry officer. The petitioner also moved with the presumption that the reviewing authority set aside the order of disciplinary authority by the order dated 27.1.1995 but in fact only the order of appellate authority was quashed.

Counsel for the petitioner while arguing the case pointed out illegalities in the communication dated 12.8.1995 by treating the same as an order passed by the disciplinary authority imposing a penalty of dismissal, however, it is not an order of punishment but is only a communication communicating reasons for disagreement, therefore, the contentions raised by the petitioner by treating the aforesaid document as an order of punishment are not required to be dealt with. At the cost of repetition, it is

worthwhile to note that the reviewing authority by order dated 27.1.1995 set aside only the order of appellate authority with a direction to disciplinary authority to supply a copy of inquiry report and also to supply the reasons for disagreement by the disciplinary authority with the findings given by the inquiry officer. The operative portion of the order passed by the reviewing authority is worth to be quoted to defuse the confusion about communication dated 12.8.1995 (Anx.P/13), which reads as under:-

> "अत: राज्यपाल महोदय याचिकाकर्ता के विरूद्ध पारित अपीलादेश निरस्त कर यह प्रकरण अनुशासनिक को इस निर्देश के साथ प्रेषित करते है कि आरोपो की जांच रिपोर्ट की प्रतिलिपि आरोप में वर्णित असहमति का पत्र, जिसमें जांच अधिकारी के असहम होने का आधार अंकित हो, देवे जिसमें प्रक्रिया एवं औपचारिकता पूर्ण हो सके। इन दस्तावेजों की प्राप्ति के पश्चात याचिका कार्य नए सिरे से अपील प्रस्तुत कर सकेगा। जिसकी म्याद दस्तावेज प्राप्त करने की तिथि से मानी जायेगी।"

The operative portion referred above makes it clear that there was no need of passing any order afresh by the disciplinary authority and the disciplinary authority rightly not passed any order afresh. The petitioner also was aware of this fact, therefore, while filing an appeal on 7.4.1995 before the appellate authority he made it clear that he has received a copy of the inquiry report but has not

received reasons for disagreement as ordered by reviewing authority.

In view of whatever stated above the challenge given by the petitioner to the communication dated 12.8.1995 (Anx.P/13) is absolutely misconceived. Nothing is said about the order of dismissal dated 26.10.1989, with this presumption that the same stood quashed by the order dated 27.1.1995 and being substituted by the document Anx.13 dated 12.8.1995. However, I found force in contention of counsel for the petitioner to the effect that the appellate authority failed to discharge its statutory duty while deciding appeal preferred by the petitioner without considering the same in accordance with Rule 30 of the Rules of 1958.

Sub-rule(2) of Rule 30 of the Rules of 1958 prescribes that the appellate authority while considering an appeal against an order of punishment is required to deal with various eventualities as to whether procedure prescribed under the Rules of 1958 was adhered and if not whether such non-compliance has resulted in violation of the provisions of the Constitution or in failure of justice, whether the facts on which the order was passed have been established, whether the facts established afford sufficient reason for making such order and whether penalty imposed is excessive, adequate or inadequate.

In the present case the appellate authority in its order first reproduced the charges levelled against the petitioner then referred the order passed by the disciplinary authority and then reproduced the contents of the memo of appeal preferred by the petitioner. After doing as above, the appellate authority without considering the appeal in accordance with Rule 30 of the Rules of 1958 affirmed the order passed by the disciplinary authority. The order of appellate authority, therefore, is not in accordance with Rule 30 of the Rules of 1958. Beside the requirement of Rule 30 of the Rules of 1958 the appellate authority is also expected to pass an order with reasons by considering the contentions raised by the delinquent employee in memo of appeal. In the present case the petitioner has raised so many contentions to challenge the order passed by the disciplinary authority in memo of appeal but no such objections and contentions have been dealt with by the appellate authority. In view of it the order passed by the appellate authority is not sustainable in eye of law.

Accordingly, this petition for writ is allowed in part. The order passed by the appellate authority dated 28.10.1995 is quashed with a direction to the appellate authority to decide the appeal preferred by the petitioner afresh by considering the

same in accordance with Rule 30 of the Rules of 1958 and by dealing with the contentions raised by the petitioner in memo of appeal. The appeal is required to be decided within a period of six months from today.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.